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PROTECTIVE OPTICS, INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PROTECTIVE OPTICS, INC.,
a California corporation

Plaintiff,

v.

PANOPTX INC.,
a California corporation

Defendant.

Case No. C05-02732 CRB (EDL)

**ORDER GRANTING IN PART PROTECTIVE
OPTICS' MOTION TO COMPEL**

Date: January 30, 2007
Time: 9:00 a.m.
Courtroom: E, 15th Floor
Before: Hon. Magistrate Judge Laporte

AND RELATED CROSS-ACTION

1 Plaintiff and Cross-Defendant Protective Optics, Inc.'s Motion to Compel Panoptx to Produce
2 Documents in Accordance with Document Requests ("Motion to Compel") came on for hearing
3 on notice duly given on January 30, 2007, at 9:00 a.m. in Courtroom E before the Honorable
4 Magistrate Judge Laporte. Daniel T. McCloskey appeared on behalf of Protective Optics. Michael D.
5 Lisi appeared on behalf of Defendant and Cross-Complainant Panoptx, Inc. Having considered the
6 briefings on file submitted by the parties and the oral argument of counsel, and finding good cause
7 therefore, the Court hereby GRANTS IN PART Protective Optics' Motion to Compel and Orders as
8 follows:

9 1. Not later than February 8, 2007, Panoptx is to produce to Protective Optics all
10 documents responsive to Requests for Production Nos. 1, 3, 4, 7, 10, 12, 13, 14, 15, 20, 22, 26 and 29-
11 32, and to Interrogatory No. 15 to the extent that Panoptx intends to serve documents to answer that
12 interrogatory under Federal Rule of Civil Procedure 33(d).

13 2. Not later than February 8, 2007, Panoptx is to serve Protective Optics with a declaration
14 from the person(s) most knowledgeable at Panoptx describing in detail the search undertaken
15 for responsive documents and affirming that the documents that have been produced to date are all of
16 the documents within Panoptx's possession, custody or control responsive to the foregoing requests.
17 This declaration shall state that Panoptx has produced all such materials so described that are locatable
18 after a diligent search of all locations at which such materials might plausibly exist.

19 3. Panoptx's objections to Request for Production No. 25 are overruled, except with
20 respect to its objection that the request for information concerning potential suppliers is overbroad,
21 which objection is sustained. Not later than February 7, 2007, Panoptx shall serve a further written
22 response to Request for Production No. 25 with respect to actual, and not potential suppliers. Panoptx
23 is ordered to produce documents sufficient to identify all actual suppliers or providers to Panoptx of
24 products, devices, components or services related to the accused eyewear products not later than
25 February 21, 2007.

26 4. Panoptx's objections to Request for Production Nos. 28 and 33 are overruled, except to
27 the extent that Panoptx is able to establish upon proper motion the overbreadth of the responsive
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documents. Panoptx is to serve an amended written response to these requests not later than February 7, 2007.

5. Panoptx's objections to Request for Production No. 34 are overruled. Panoptx is to provide a full and complete written response not later than February 7, 2006, and to produce all responsive documents, if any, within its possession, custody or control not later than February 21, 2007.

6. Panoptx's objections to Request Nos. 44, 45, 48 and 49, based on overbreadth are sustained. Based on the parties' meet and confer, these discovery requests are modified as set forth below. Not later than February 7, 2007, Panoptx is to serve a full and complete written response to the requests as modified. Panoptx shall produce all responsive documents within its possession, custody or control, not later than February 21, 2007:

- Request for Production No. 44: All documents related to or reflecting any communications between Panoptx and any agent, employee, representative or member of the United States military relating to the sale of Panoptx's products to the United States military.
- Request for Production No. 45: All documents relating to any person identified in your response to Interrogatory No. 1 served herewith, and concerning the accused eyewear products, and/or Protective Optics' technologies, intellectual property, products or patents.
- Request for Production No. 48: All documents relating to any person identified in your response to Interrogatory No. 11 served herewith, and concerning the accused eyewear products, and/or Protective Optics' technologies, intellectual property, products or patents.
- Request for Production No. 49: All documents relating to any person identified in your response to Interrogatory No. 17 served herewith, and concerning the accused eyewear products, and/or Protective Optics' technologies, intellectual property, products or patents.

7. The parties agree that for the purposes of these discovery requests, the accused eyewear products shall mean the products identified in Protective Optics' Amended Final Infringement Contentions.

8. Panoptx's objections to Interrogatory Nos. 10 and 15 are overruled. Panoptx is ordered to serve full and complete written responses to Interrogatory Nos. 10 and 15 not later than

1 February 7, 2007. With respect to Interrogatory No. 15, Panoptx is ordered to produce all documents
2 upon which it intends to rely under Federal Rule of Civil Procedure 33(d) not later than February 21,
3 2007.

4 9. Not later than February 7, 2007, Protective Optics shall return to Panoptx any and all
5 originals and copies of the document submitted under seal as Exhibit A to the Declaration of Jong P.
6 Hong in Support of Reply to Motion to Compel.

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8 **IT IS SO ORDERED:**

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10 Dated: February 6, 2007

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By: 
HON. MAGISTRATE JUDGE LAPORTE